Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
Comprehensive Review of Universal Service Fund Management, Administration and Oversight	)	WC Docket No. 05-195
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket 02-6
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifelink and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

Kellogg & Sovereign Consulting, LLC
INITIAL COMMENTS
FCC Further Notice of Proposed Rulemaking FCC 05-124

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I. INTRODUCTION

In response to the Commission's Further Notice of Proposed Rulemaking, FCC 05-124, released June 14, 2005, Kellogg & Sovereign Consulting, LLC hereby respectfully submits our comments on the proposed changes and other aspects of the universal service support mechanism specifically as it relates to the schools and libraries program ("E-Rate").

Kellogg & Sovereign Consulting, LLC ("K&S") has been directly involved in the E-Rate program since its inception in 1998. As a consulting firm, we assist schools and libraries in applying for universal service discounts as provided by the E-Rate program. Recently, we have also been involved in assisting two large school districts in Connecticut with KPMG audits and have represented thirteen school districts with Bearing Point site visits associated with USAC's extended outreach program. For the 2005-06 funding year, we worked with applicants to file over 360 applications which will ensure that 180 school districts and library systems comprising over 213598 students will have access to affordable telecommunications and Internet Access. The schools and libraries we serve are located in Oklahoma, Connecticut, Colorado, Illinois, and New Jersey with the majority located in Oklahoma. The largest school district is Bridgeport School District with 40,000 students and the smallest is Plainview located in the panhandle of Oklahoma with 18 students.

II. COMMENTS

A. Management and Administration of the USF-Administrative Structure

1. Administrative Structure

Re: Paragraph 12. Administrative Structure. We believe that a permanent administrative entity is necessary due to the nature of the E-Rate program. The program is too complex and spans too long a period of time to change the administrator. We believe the current structure does provide for the stability needed in the program. We do, however, believe that the Commission needs to dedicate more resources to the E-Rate and USF programs. The Administrator may not "make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress." (47 C.F.R. § 54.702(c)). Therefore, when an issue arises that is outside of USAC's authority, USAC must be able to present the issue to the FCC and receive guidance in a timely manner. In our experience USAC handles problems in a reasonably timely manner, but then when FCC must make a decision, everything tends to come to a halt for an indefinite period of time. A good example of this is the recent FCC decision to use E-Rate funds to assist schools and libraries affected by Katrina. On September 15, 2005 the Commission announced its intentions to provide

assistance. USAC responded by preparing a letter to the FCC with details of the procedures and various questions they had regarding administrative matters related to the Katrina relief efforts. At the Congressional Hearing on October 5th, 2005, USAC discussed the letter and said that they had not yet heard anything back from the FCC regarding their questions.

Re: Paragraph 17. Filing and Reporting Requirements. We recommend that the USAC reports that are prepared for the Commission that contain non-confidential data be available on either USAC's or FCC's web site.

Re: Paragraph 21. Borrowing Funds. Since the universal funds were intended to be self-sustaining, borrowing should not be permitted under any circumstances. The program is set up as a discount program whereby discounts are made available based on the availability of funds. We agree with the proposal that in the event that funds are insufficient to cover costs and administrative expenses, the Commission should seek to collect additional funds and postpone payments until sufficient funds have been received. However, measures should be already put in place to prevent insufficient funds. If not, such measures should be developed and implemented immediately. The Commission and the Administrator should have developed forecasting tools that monitor actual balances, committed funds, projected contributions, and administrative costs. Tolerance levels should be defined and actual data should be carefully monitored to ensure shortfalls do not occur.

In the event of a shortfall of funds the delay of payments will affect beneficiaries based on their situations. We have listed the worst situations or most adversely affected first with the least affected last:

a) Beneficiary Most Affected: Equipment has been purchased. Beneficiary budgeted only for their non-discount share. Beneficiary has paid in full for the product and is waiting for reimbursement. (BEAR method). Beneficiary is adversely affected as they have already paid the service provider and they do not have funds in the budget to pay for the discount amount (E-Rate's share).

b) Service Provider Most Affected: Equipment has been purchased, delivered and installed. Service Provider only required the school/library to pay their non-discount share. Service Provider must pay the wholesaler for the products and must pay labor costs for their employees. If the service provider invoice (SPI, Form 474) is not paid in a timely manner, the service provider will have to borrow funds to cover the shortfall and will incur interest charges until the SPI is finally paid. Depending upon the size of the service providers' company and the total charges held up with the SPI, the service provider may not be able to handle the unforeseen financing charges and could be forced out of business.

c) Both Beneficiary and Service Provider Affected: Beneficiary is in a contract for monthly, recurring services for high bandwidth data transmission services. Service Provider is already providing the services which were originally installed with E-Rate funding in a prior year. Beneficiary has only budgeted for their non-discount share for the new funding year. If there is a delay in funding, the beneficiary can usually make payments for the first few months until the budget for their non-discount share runs out. Usually the costs for the advanced telecommunications and Internet Access services are much higher than what the beneficiary could afford without E-Rate (that's why we need E-Rate!). The service provider typically will "carry" the school/library for a few months and possibly up to the entire year. However at some point the service provider will have to disconnect service and disrupt the educational activities at the school or library.

d) Beneficiary Affected. Funding is denied for services that have not yet been purchased/installed/started AND the services are needed to provide advanced telecommunications and Internet Access for a new classroom building or library or to replace services that are no longer operational. In this case the beneficiary cannot hold classes or provide library services until the essential services are installed. The beneficiary is not incurring finance charges, but there is still a financial cost for the delay in being able to service the students and/or library patrons.

e) Least Affect to both beneficiary and service provider: Funding is denied for services that have not yet been purchased/installed/started AND the services are an upgrade or expansion of existing services or new technologies for which the beneficiaries' programs are not yet dependent. In this case no actual costs have been incurred by either party. The service provider may have budgeted for the income and the beneficiary had incorporated the new services in their technology plan, so certainly there will be a negative effect but it won't be as significant as the other examples listed.

Re: Paragraph 22. Administrative Procedures. Since the E-Rate filing process is done on an annual basis, we recommend that there be a concurrent process for annually codifying USAC's administrative procedures. As part of this process, all certifications and additional documentation that will be required by USAC's program integrity assurance (PIA) review process should be finalized prior to the opening of the Form 471 filing window. The process for codification of USAC's administrative procedures as well as the final requirements for supporting certifications and documentation should follow the same timeline as that for approval of the Eligible Services List. (See also our comments on paragraph 29.) It creates an undue burden on all participants in the E-Rate program when new rules and processes are developed for a given funding year AFTER the applications (Form 471) have been filed.

Therefore, we suggest that on an annual basis, USAC would provide a list to the FCC of administrative procedures that USAC recommends should be codified.

The "procedures to codify" list would be presented to the Commission at the same time as the recommended changes to the Eligible Services List. Both the eligible services list and the list of administrative procedures to codify could then be posted for comment. Both would then be available in final form prior to the opening of the Form 471 filing window.

In the auditing context, we believe a beneficiary's lack of compliance with USAC non-codified administrative procedures should be written up as a point of non-compliance. The audit report would list the areas of non-compliance. The beneficiary would in turn be required to develop and implement procedures that would prevent such non-compliance in the future. Any financial penalties would have to be reviewed on a case by case basis. Since many of USAC's administrative procedures are not publicly available, penalties for non-compliance of such procedures may need to be mitigated based on the particular facts. In all cases, de minimus standards should be implemented to avoid incurring administrative costs that exceed minimal non-compliance of administrative procedures.

2. Performance Measures

Re: Paragraph 26. E-Rate Performance Measures.

Measuring the performance of the E-rate program using the percentage of public schools connected to the internet is a valid way of demonstrating that the applicants have requested and installed circuits capable of accessing the Internet. It does not measure whether the circuits are actually being used. However it is a true reflection of the goal of connecting all schools and libraries to the Internet.

Today, measuring usage of circuit use is an ongoing daily practice of most large network providers. The ability to obtain usage daily, weekly, monthly and yearly is accomplished through a variety of monitoring software. Usage records can be kept for each circuit connected to a district or school. The inherent problem with using this data as a measurement tool is that they measure all types of activity, not just educational sites. This includes SPAM that is getting through the network to the entity, personal emails, accessing web sites that are not related to any educational use and other uses unrelated to E-Rate specific services.

The Form 471, Block 3, currently gathers information on the technology installed at the school/library as well as connectivity. We would recommend continuing to use the existing information provided on the Block 3 as well as exploring technology assessment data already gathered at the state level by the state departments of education. We also recommend

that the Commission not add comprehensive reporting requirements on installed technology at the schools/libraries beyond what is currently required on the Form 471 as this would add an undue burden on the applicants who already provide detailed technology information in the technology plan and in various technology assessments from the state departments of education and library boards.

3. Program Management

Re: Paragraph 32. Program Management. The approval of invoices takes an inordinate amount of time. Even if the invoice is an exact match of the originally approved Item 21 attachments for the associated funding request number, the invoice reviewers re-evaluate the eligibility of each item on the invoice. We recommend that USAC consider adopting methods used by the health care industry in approving payment of services. By utilizing the Universal Product Codes (UPC), USAC may be able to assign eligibility to items based on the products' UPC.

Alternatively, a new coding system could be developed that would be used by all participants. The numbering system could be based on the layout of the eligible services list with a category number (Telecommunications, Internet Access, Internal Connections, Maintenance), functional services number (Cabling/Connectors, Circuit Cards/Components, Computers, Data Distribution, Data Protection, etc.) and a service number (Cabling). For example: I-5-10 might be the code for Internal Connections-Data Protection-Firewall. All items listed on the E-Rate application would have an associated code. The ESL code would be entered on the Item 21 attachment pages and could also be a look up table used on the online Item 21 attachment tool. All invoices submitted to USAC would also have an associated code.

Adopting additional processes from the health care industry to control costs, USAC could develop allowable price caps for different codes which could only be exceeded if the service provider and/or applicant could provide supporting documentation to justify a higher price.

Re: Paragraph 33. Formula method.

In our opinion, the formula method would not work for the E-Rate program. In our experience different schools and libraries utilize technology in very different ways. Some schools are on the cutting edge of technology and are constantly pushing the envelope. Other

schools implement only the bare minimum of technology in reluctant response to parent and community pressure. A formula method would not provide sufficient resources for those schools and libraries who utilize technology to the fullest and would provide for services that would go unused at schools and libraries who utilize limited technologies. The formula method would not have a competitive bidding process and therefore services purchased may not necessarily be the most cost effective solution. It would also be difficult to incorporate into the formula method factors that allow for rural and smaller school districts whose cost of services are greater due to location and lack of economies of scale. Finally, the only way to verify that funds under a formula approach were being used in accordance with the program goals would be to develop a reporting process whereby beneficiaries would report how funds were spent. This would create undue burdens on everyone involved especially in cases where funding was requested to be returned if it had not been used for the properly approved purposes. Over time, the formula approach would evolve back to the application approach we have today in order to ensure that funds would not be denied after the fact and to provide a systematic process to ensure that funds were being spent for approved products and services.

4. E-Rate Application Process

Re: Paragraph 37. Application Process.

a. Three-year Application for Priority 1 Services

We agree that the application process could be streamlined for Priority 1 services by establishing a different application cycle for applicants with repeat requests. One way to do this would be to provide for a three-year application that would only require annual updates. There are many advantages to a 3-year application:

1. Eases filing burden
2. Reduces Program Integrity Assurance (PIA) review in years 2 and 3 of the application
3. Parallels technology plan that already covers a three year period
4. Eases administrative burden on service providers who currently have to stop and start discounts when one funding year ends and another begins
5. Reduces administrative costs in processing forms as most forms will only be required in the first year: Form 470, 471, 486.
6. Reduces burden on both applicants and service providers who participate in the competitive bidding process. Participants would still need to comply with state and local procurement rules.

7. Provides the Commission with base data for predicting demand estimates in future years.
8. Reduces risk of beneficiaries who choose to implement advanced technologies that the school or library could not afford without E-Rate funding. Advanced technologies are costly and once installed the school and/or library quickly becomes dependent on the advanced services such as high bandwidth Internet Access. If the beneficiary knows they can depend on E-Rate funding, then the schools and libraries can embrace advanced technologies which is in line with the goals of the E-Rate program to provide affordable access to telecommunications services.

Additional items that would need to be considered in implementing a three-year application for Priority 1 services:

- Provision for adjusting funding request upward in years 2 and 3 of the program to accommodate for increased prices and/or additional services (e.g. additional phone lines needed to accommodate a new classroom building). USAC may consider allowing price adjustments up to 10% each year without requiring additional PIA review. Increases above 10% would require additional review .
- Changes in service providers (SPIN) and changes in services (service substitutions) could be handled using the same processes already in place.

Once the three year Priority 1 services application has been successfully implemented, we would recommend that the Commission consider also implementing a three year application process for Priority 2 services. The Priority 2 application would provide for phasing of projects that the applicant can only afford if budgeted across three years.

b. Cut Off Date for Changes to Administrative Policies and Procedures and Codification of USAC Administrative Procedures.

As we previously discussed in Paragraph 22, we recommend that the Commission adopt procedures to set a cut off date for changes to administrative policies and procedures and codification of USAC administrative procedures for any given funding year. The process for changing and finalizing the Eligible Services List could be applied to the process for codification of USAC administrative procedures as well as any additional certifications and policies that will be applied to applications for the given funding year.

For example, in funding year 2005, a new box was added on the Form 471 to indicate if an entity had a Pre-K, Adult Ed or Juvenile Justice program. If you marked the box, then during program integrity assurance (PIA) review, the reviewer asked that you provide a written statement verifying that the entity did indeed have a Pre-K, Adult Ed, or Juvenile Justice program. This additional certification requirement should have been in the

Form 471 instructions for Block 4, column 9. The instructions for Form 471, Block 4, column 9, state: "Item 9a, Column 9: Check this box if the individual school includes pre-kindergarten, adult education, or juvenile justice students and/or facilities." *Hundreds of hours of time on the part of PIA reviewers and applicants would have been saved if the instructions had continued with the following:* "If you check any of the boxes, provide a statement on your organization's letterhead signed by a school official in your Item 21 attachment pages for this application. The statement should clearly state the Form 471 application number, billed entity #, billed entity name, and which program (Pre-K, Adult Ed or Juvenile Justice) is offered at the entity."

Also in funding year 2005, PIA requested that the applicant provide an Internet Access certification signed by the Superintendent on school letterhead. *Again, if this certification requirement had been listed in the Form 471 instructions, the applicants could have prepared the necessary certifications and included them with their Item 21 attachment pages saving untold hours of PIA review time.*

If the cutoff deadline for such certifications was set prior to the opening of the Form 471 filing window, then the administrative burden on both applicants and PIA will be significantly reduced. The applicant would have sufficient time to prepare the proper certifications and include them with their attachment pages. Various organizations who provide E-Rate training would have time to train applicants on how to complete these certifications. And finally, PIA would not have to request these certifications and explain them for each individual application. Instead, PIA would only have to request certifications and other supporting documentation from the applicants who had not carefully read the instructions or otherwise omitted the certifications from their attachment pages.

c. Service Provider involvement in PIA Review

In order to facilitate timely responses to PIA requests, to help minimize the number of applications denied due to lack of timely response to PIA and to allow the service provider reasonable notice time to assist the applicant, as applicable and appropriate, we suggest the following: Require PIA to contact the service provider (SPIN) listed on the Form 471 by email in the event that an application is pending denial due to lack of response from applicant and allow seven days for the service provider(s) to attempt to contact the applicant. This could be coordinated with PIA's second letter to the applicant. Also, consider allowing the service provider to request an extension on behalf of the applicant in order to contact the appropriate individual at the school who needs to respond to the PIA request.

Re: Paragraph 38. Timing Issues related to the E-Rate Program. We would like to specifically comment on the timing issues that need improvement. The Commission and USAC should have deadlines or at a minimum performance goals for processing the various forms. We recommend the following:

E-Rate Phase or Process	Turn-around Time
USAC or FCC clerical error made on an application	14 days. Note that any error made by USAC especially in processing an application should NOT have to go through the appeals process before the correction is made.
Appeals	Appeal decision should be issued within 6 months regardless of whether the appeal is filed with USAC or the Commission
Program Integrity Assurance (PIA)	PIA review should commence within 3 months of the closing of the filing window. Once an initial review has begun, the review should be completed within 30 days as long as there are no delays in applicant responses
Service Substitution Request (SSR)	Review of SSR should be completed within 60 days of receipt of request.
Service Provider Identification Number (SPIN) change request	Review of SPIN change request should be completed within 30 days of receipt
Service Provider Invoices-SPI (Form 474) & Billed Entity Applicant Reimbursement-BEAR (Form 472)	Timing on this has already been worked through extensively by USAC. Continue to follow measures set by USAC in this area.
Forms 486 and 500	Process within 60 days of receipt
SPIN Split. This is done when two different service providers provide the services originally requested on one funding request number.	Process could be expedited by not requiring a new Form 486 for the newly created FRN. Also, current procedures require the newly created FRN to go through appeals funding process. This should not be necessary since the funds were already committed on the original funding request.
Form 471 Data Entry Corrections as allowed on the Receipt Acknowledgement Letter	These corrections are processed by the program integrity assurance (PIA) reviewer when the application goes through initial review. If the PIA reviewer makes a mistake in entering the data entry correction, the mistake should be able to be corrected within 14 days. The correction should NOT have to go through the appeals funding process.

As stated earlier in our comments to Paragraph 12, we agree that the Commission needs to commit additional resources at the FCC level to provide action on items that are beyond USAC's role. The Commission needs to be able to take timely action in the areas

that are outside USAC's area of responsibility but are required in order for USAC to effectively administer the program. Since USAC is prohibited from making policy or interpreting the intent of Congress, the Commission must have adequate staffing and or resources in order to respond in a timely manner to the Administrator's requests of the Commission for guidance and rulemaking.

Re: Paragraph 39. Definition of a completed Application. The minimum processing standards are clearly stated in the instructions to the Form 471. Any additional minimum standards such as requiring that the technology plan be signed by an authorized entity should definitely be published in the instructions to the Form 471. For example, current rules require that an applicant have an approved technology plan prior to the start of services. If the technology plan itself should be signed by an authorized entity, then this would be a new requirement that would need to be clearly stated in the instructions for the Form 470 and the Form 471. Any changes should also be posted in the "Important Notices" section on the USAC schools and libraries web site. Applicants should not be held to minimum standards that are not publicly available in the printed instructions and the web site prior to the opening of the filing period for the affected forms for the related funding year.

Re: Paragraph 40. Competitive Bidding.

We do not recommend that the Commission add any new rules for the competitive bidding process. Schools and libraries are already subject to local and state procurement rules that have been developed over the years and there is no reason to "reinvent the wheel." Additional rules above and beyond state and local procurement rules only increase the administrative burden on applicants and rarely results in more cost efficient bids. We do recommend that the Form 470 process along with the 28 day bidding period remain unchanged. The Form 470 directs service providers to those applicants who are looking for their services.

We reviewed the pilot on-line eligible products list but did not utilize it as most of the products and services used by the applicants we worked with were not included in the list. Additionally, there have been "mixed signals" as to whether or not the items on the eligible products list have or have not been pre-approved as E-Rate eligible products pending verification of eligible use of the products and eligible locations.

The eligible services list has continued to evolve and reflect new technologies each year. As discussed earlier in paragraph 32 regarding program management, we suggested

that the Commission and/or the Administrator may want to consider implementing a coding system for eligible services based on current product numbering systems (UPC) or a "smart coding system" that would identify the eligible services category and function of the service. By utilizing a coding system for services, USAC could adopt procedures used by the medical profession in reviewing invoices and controlling costs.

We do not believe it is necessary to publish service life or depreciation guidelines for equipment. This information is already readily available as part of accounting and taxation rules which most schools and libraries are already subject to.

We have not had a situation where we utilized the Good Samaritan policy, although the process or a similar one should be continued to handle cases in which the BEAR form cannot be processed because the service provider is no longer in business. Alternatively, the Commission may want to consider issuing the reimbursement check directly to the applicant.

Re: Paragraph 41. Forms.

Form 470. As we previously stated in paragraph 40, we believe that the Form 470 does facilitate the competitive bidding process and the Commission's rules should continue to require this form and its public disclosure.

Form 486, CIPA and Technology Plan certification. Using the Form 486 to certify CIPA compliance and approval of the technology plan causes a lot of problems for the applicant and service provider(s).

As stated on the instructions of the Form 486, "The Form 486 informs the SLD when the Billed Entity and/or the eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year from the named service provider(s). Receipt by the SLD of a properly completed Form 486 triggers the process for the SLD to receive invoices."

The Form 486 is also filed to "To indicate approval of technology plans (as required)" and to indicate "the state of compliance with the Children's Internet Protection Act (CIPA)(Pub. L. 106-554)." (See Form 486 instructions, page 2, OMB 3060-0853, August 2003.)

The problems with the 486 are associated with the fact that the Form 486's initial purpose of indicating start of service is on the funding request number level, but the certification of compliance with CIPA and the technology plan approval are on the billed entity level.

If a Form 486 is filed late for any given funding request number, the system will prorate the funding and issue an error that the Form 486 service start date was issued due to the 120 day CIPA compliance. This unfairly penalizes an applicant who was in compliance with CIPA, did have their technology plan approved prior to the start of service, but was late on filing the Form 486.

To solve this problem, we recommend that the Commission consider the following options:

a. Determine that the certifications that are already on the Form 471 are sufficient for the technology plan certification. On Item 26 of the Form 471, the applicant has already certified that they have or will have an approved technology plan . Then add the CIPA certification to the Form 471 and have the applicants certify in advance that they will be in compliance.

b. Implement a process whereby the first Form 486 submitted for the funding year for a given billed entity will cover the technology plan and CIPA certification requirements for all funding requests for the billed entity for the given year. In other words, when the billed entity submits a Form 486 for any funding request, then the program would tag all of the other funding requests for that billed entity for the associated funding year as approved for meeting the CIPA and technology plan certification requirements.

c. Change the Form 479 to include technology plan certification and be a required form that must be submitted to USAC within 120 days of the start of the funding year.

The next item on the Form 486 that needs to be resolved is the ability to file an extension request. Current rules allow for invoice extension requests and service delivery deadline requests. If the Form 486 was not filed due to circumstances beyond the control of the service provider, then there should be a process in which the applicant can request an extension for time to file the Form 486. Currently the "no exceptions" policy on the 120 day deadline for filing the Form 486 creates an undue burden on service providers and applicants. Frequently the services that are affected by the late filed Form 486 are monthly recurring services. Since these costs have been incurred by both the applicant and service provider, the applicant ends up having to pay in full for these services when all they needed to do was file the Form 486. This creates a terrible situation for everyone involved. The services were properly applied for and funded. The applicant has done everything correctly in order to receive discounts except file the Form 486 within the 120 day filing period. The "no exception Form 486 deadline" is also contrary to the E-Rate program's goals to provide affordable telecommunications services to all Americans. Therefore, we believe the 120 day deadline should stay in place, but there should be relief in the form of an extension process for the Form 486.

The last item regarding the Form 486 that we would like to comment on is the relationship between the Form 486 and the Form 500. If an applicant files a Form 486 and provides an incorrect service start date, the applicant should be able to correct the Form 486 by filing a Form 500 and showing the correct service start date. We had this exact situation occur in Funding year 2002 and the Form 486 SSD was never corrected. Example: The funding commitment decision letter was issued in October, 2002. The Form 486 was filed with a service start date of 11/1/2002. But the services had actually started on October 1, 2002. On November 15, 2002 (still within the 120 day Form 486 filing period) we filed a Form 500 to correct the service start date from 11/1/2002 to 10/1/2002. By the time USAC processed the Form 500 (due to their delay), they could not change the service start date since the 120 day deadline for CIPA certification had passed. We recommend that the Form 500 process be changed to allow a correction to the service start date as long as the Form 500 is filed (postmark date) within the 120 day filing period for the Form 486.

Form 500. The Form 500 is still filed in paper form. Applicants should be able to file this form online and certify using a PIN. See the discussion above regarding use of the Form 500 in correcting the service start date.

Form 472. Comments have already been submitted regarding the new Form 472. We would like to take this opportunity, however, to recommend that the Form 472 include remittance information (contact name and address) of the billed entity so the service provider will know who to make the check payable to.

Since the Form 472 requires the service provider's signature, the Form 472 cannot be completed online. However, there should be a process whereby the applicant can scan and submit a completed Form 472 using the submit a question tool on the SLD web site (http://www.slforms.universalservice.org/EMailResponse/EMail_Intro.aspx).

Re: Paragraph 42. Forms. Timing of Application Cycle.

If the application cycle is followed as originally designed without undue delays, the timing works very well within the school calendar. Technology plans are prepared and/or updated in September when school starts. Forms 470 and RFPs are posted in September-October with bids due November-December. Bids are reviewed in January and board approval and contracts are signed prior to filing the Form 471 in February. The applications are reviewed February-May and funding letters ideally are issued in June-July. Funded

services begin in July and new equipment and new services are installed prior to the start of school in August/September.

As we stated earlier in our response to Paragraph 37, Application Process, we believe the implementation of a three-year application for Priority 1 services would result in significant savings in administrative costs for all parties involved.

Regarding the use of the October 1st data for determining the number of students eligible for the NSLP, we agree that this date for data, October 1st or the most current is reasonable.

We do have concerns related to the timing of the E-Rate application cycle as it relates to any new rules that may be adopted in the future for contracts for monthly recurring services. The current rules require signed contracts for all services except tariffed and month to month services. We strongly believe that the current rules exempting tariffed and month to month services from contract requirements should remain unchanged.

In many cases there are service agreements as well as contracts for monthly recurring services that should not be required under the same rules as contracts for non-recurring, Priority 2 services. Requiring contracts for monthly, recurring services to align with the E-Rate application filing process would create an administrative burden on all parties involved and would not in any way improve the efficiency of the program nor would such a requirement reduce waste, fraud or abuse in the program.

For example, school district A requests E-Rate discounts for a new T-1 circuit for FY 2003. District A receives their funding letter in August, 2003 and they sign a one year services agreement with their service provider starting August 15, 2003 that expires August 14, 2004. When District A prepares their Form 471 for the following year, if the same provider is selected to continue to provide the services for FY 2004, the date of the services agreement (8/15/04 to 8/14/05) would not be aligned with E-Rate's calendar (07/1/04 – 06/30/05). We strongly recommend that the Commission leave the contract requirements alone and not add any additional rules in this area. State and local procurement rules as well as federal regulations are sufficient to control the contractual and legal issues related to these services.

The Commission may, however, want to clarify their rules related to contracts to clearly specify that contracts are required only for non-recurring, Priority 2 services.

Re: Paragraph 43. Service Providers and Consultants.

We agree that the Commission should establish quality standards or standards of conduct for service providers and consultants. USAC has already provided guidelines for service providers in the service provider manual which is posted on the SLD web site. Additionally, we recommend that the Commission adopt screening procedures prior to allowing a service provider to participate in the E-Rate program. In order to participate in the program, the service provider should meet reliability and credit history requirements. Examples: the service provider would be required to pass a standard background check by the their state bureau of investigation, have an acceptable credit rating, and have a satisfactory record with the Better Business Bureau.

We recommend that the Commission adopt policies for E-Rate consultants similar to those used by Certified Public Accountants in regards to full disclosure of commissions and business relationships that the consultant has with service providers and applicants. For example, if the consultant is assisting an applicant with the technology plan and Form 470/RFP process, the consultant should be required to disclose any relationships the consultant has with service providers who may be bidding for the applicant's services.

We agree that the Commission should impose a certification process for consultants for E-Rate. Throughout the life of the E-Rate program, individuals and companies have become involved in both participating in the program and providing consulting assistance to both service providers and applicants. There are a large number of experienced E-Rate consultants who provide a valuable service to the service provider and applicant community. However, there are also inexperienced and/or careless consultants who provide poor and/or incorrect advice. We believe that an individual or company who holds itself out as an E-Rate consultant should be both experienced and knowledgeable in all aspects of the program that they profess to be experts in. A consultant who gives the wrong advice can cause seriously negative repercussions on service providers and applicants who place their trust in the consultant.

Therefore, we believe that the Commission should consider implementing a certification process for E-Rate consultants. The Commission should look to the certification process used in other consulting professions for examples of successful programs.

Points to consider:

- The certification should use a combination of number of years' experience, annual or biannual training requirement, and an initial certification test.

- Certification should be at the individual level.
- Cost of the certification would be charged to the consultant applying for certification. However since the certification of consultants will benefit the program overall, the Commission may choose to pay a portion of the costs to make certification affordable for all qualified consultants.
- Certification should also be renewed annually with proof that the consultant has met the annual or biannual training requirement.

Benefits would include:

- Consultants will be required to have annual training so will be better prepared to ensure that program participants maintain effective procedures for complying with program rules.
- In preparation for passing the certification test, consultants will have to review the rules of the program and have a solid understanding of processes in place that deter waste, fraud and abuse
- Certified consultants can be relied upon to provide better quality outreach and education for E-Rate participants
- The certification process will weed out inexperienced individuals who provide poor advice and add confusion to the filing process
- The certification process will deter unscrupulous individuals from holding themselves out as E-Rate consultants
- The certification process will assist the Commission in achieving its goal to protect the program against misconduct, including waste, fraud, and abuse.

B. OVERSIGHT OF THE USF

1. Independent Audits

Re: Paragraph 71-75. E-Rate Beneficiary Audits

We agree that an independent audit on an annual basis would deter the smaller schools and libraries from applying for discounts from the fund.

In our experience the site visits conducted by Bearing Point have been very successful. These visits not only provide awareness of compliance to the applicant community, but they also provide USAC with a list of areas that require additional oversight. We highly recommend the continuation of the site visits.

The number of beneficiary audits need to be increased, however we are concerned about the requirement of an annual audit for applicants that receive $3 million or more in

discounts in any funding year. These larger applications are already under increased scrutiny. In our experience with the larger applications, program integrity assurance requires additional review procedures for the larger applications. The larger applicants are also more frequently required to respond to the Item 25, Selective Review. Additionally, since their invoices are for larger amounts, the invoicing approval process at SLD requires greater review procedures before payment is issued. Therefore, we are not convinced that an annual audit for only the larger applications would reduce waste, fraud and abuse in the program. As we stated earlier, the site visits seem to have made a significant impact on applicants at all levels, and we encourage the Commission to assess the effectiveness of the site visit program in achieving its goal of protecting the program against misconduct, including waste, fraud, and abuse before making a decision to impose new audit requirements on E-Rate beneficiaries.

We believe the burdens of an independent audit requirement would be excessive since the larger applications are already under increased scrutiny and review. Whenever an application is audited, the beneficiary must dedicate administration, technology, teaching, and office staff to assist the auditor in all phases of the audit process.

If the Commission decides to go forward with the annual independent audit requirement, we recommend that USAC be required to procure the services of an independent auditor to perform the audits in accordance with generally accepted government auditing standards ("GAGAS") and the costs of the independent audits be borne by the USF itself. Audits frequently involve many staff members that must devote hours outside of the normal school day in the assembly of supporting documentation. This puts an undue burden on applicants that cannot be anticipated and therefore cannot be budgeted for in advance.

We do not recommend using internal auditors and other applicant staff to perform reviews or audits. The use of an outside auditor strengthens the validity of the findings and provides an unbiased view of the actual processes being used by the applicant.

We agree that procedures should be put in place to ensure that an entity is not audited more than once for a given program year.

The current number of beneficiary audits is still too low in comparison to the number of applications submitted each year. We recommend that the number of beneficiary audits be increased. Additionally, the time it takes for the FCC to respond to the auditor's reports needs to be shortened.

We recommend that the Commission notify service providers when an application they are listed on is being audited. In many cases, prior notification of the service providers would increase the applicant's ability to have the documentation requested in a timely manner.

METHODOLOGY

We represented a large district with an on site beneficiary audit in July, 2005. The audit process was very thorough and in our opinion was a well thought out audit program which effectively assessed the beneficiary's compliance with the program rules. The auditors were properly trained and used their time and resources efficiently and effectively. As a prior auditor, I would also like to point out that it is not in the best interest of the program to have the on site auditor fully knowledgeable about all areas of the E-Rate filing process. The on-site auditors' job is to collect the information and follow the audit program. If the auditor knows what the "correct answers" are, they can unwittingly guide the beneficiary. In my previous work as an auditor, we usually had new staff gather the on-site documentation for this reason.

We do not believe that unpublished USAC administrative policies and practices should be included in the audit. This information could be provided to the beneficiary on an educational/outreach basis, but not as an audit item. We believe the current methodology being used by KPMG for the beneficiary audits is sound and comprehensive. The only changes would be to provide additional resources so more of these audits can be completed.

AUDIT COSTS

Costs to the district for the audit included our time to assist with the on-site audit activities and follow up questions (4-6 weeks), time of the staff to pull records and make copies (2 weeks) , time of the business manager and technology director to explain processes and procedures (2-4 weeks), time of the technology director to take the auditors to see the installed equipment (3 days), time of the board secretary to find relevant board minutes and agendas (1 day). The district also had to dedicate a conference room and work space for two weeks for the auditors. The service providers were also involved in providing copies of additional documentation including invoice history, copies of forms submitted and billing and payment analysis (4-6 weeks). One of the service providers had been purchased by another company, so we involved the attorney of the acquiring company to locate additional records. Whenever the staff of the beneficiary was involved in assisting the auditors, they were not

able to do their normal jobs of providing education and supporting education and or library services.

2. Measures to Deter Waste, Fraud and Abuse

Re: Paragraph 90. Funding Cap

We recommend that no action be taken that would limit the funding an applicant can receive annually until the 2 in 5 rule is fully implemented.

We recommend exempting Priority 1 from competitive bidding for a period of three years. This would relieve the applicants from undue burden and would enable a smooth continuation of services from year to year.

It is our recommendation, however, that a measure of reasonableness be established for internal connections equipment. A $400,000 server for a school with a total K-12 population less than 1,000 students is excessive. The use of Manufacturers Suggested Retail Prices (MSRP) would be an effective way of evaluating reasonable costs.

BEST PRACTICES

The publication of "best practices" would be helpful to applicants who are looking for information on how to complete their applications each year. The frequent turnover of staff members in schools and libraries means that a brand new staff member with no prior E-Rate experience may be responsible for completing the school or library's E-Rate application.

TWO OR MORE BIDS

We recommend that the Commission modify the competitive bidding rules to require a minimum of two bids. This practice would provide an effective measure for deterring waste, fraud and abuse. We have encouraged our client schools to seek three bids for all Internal Connections equipment. Without a point of comparison between multiple service providers there is no way to identify the most cost effective solution.

There is no reason any school or library that has Internet access should have difficulty obtaining at least two bids on any of the equipment that is included on the Eligible Services List. By accessing web sites they can choose from a myriad of service providers that market both equipment and services on the Internet.

REASONABLENESS TESTS

It is our recommendation that a measure of reasonableness be established for all internal connections equipment. It is our understanding that Program Integrity Assurance(PIA) reviewers are already implementing some reasonableness tests. For example, a $400,000 server for a school with a total K-12 population less than 1,000 students should be considered excessive.

RE: Paragraph 91. Higher scrutiny for previous rule violators

We recommend that the Commission adopt specific rules governing higher scrutiny for previous applicant rule violators. These rules should include an annual audit of the beneficiary, and review of 100% invoices submitted for payment.

For all service providers, we recommend that before an initial Service Provider Identification Number (SPIN) is issued to a new provider, there be an initial check of the credit worthiness of the provider, a check by the State Bureau of Investigation for the state in which they operate, and a Better Business Bureau evaluation.

For service providers that have been identified as participating in fraudulent actions, we recommend that these service providers should have to have an annual audit of their E-Rate activities and have 100% review of invoices submitted. If a provider is under investigation or owes a commitment adjustment, all other USF payments to the provider should be suspended until the investigation and other pending matters are cleared.

3. Other Actions to Reduce Waste, Fraud and Abuse

Re: Paragraph 95. Adopt specific rule prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner.

We recommend that the Commission adopt rules specifically prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner. These rules should be published and readily available to applicants by including them in directions for applying for funds.

Rules should apply not only to intentional acts of fraud, waste, and abuse, but also when applicants or recipients recklessly or negligently use funds in an inappropriate manner.

These rules should clearly define what is considered waste, fraud, and abuse and also clearly define what constitutes “excessive” amounts.

Re: Paragraph 97. Debarment Rules.

We recommend that information on the companies that have been debarred, along with the findings that led up to the debarment, should be made available to applicants. This information should be published on the USAC/SLD website like any other information on the E-Rate program and available within the "Reference Section".

We do not recommend that information be provided to schools and libraries when a contractor is under investigation. Doing so before a contractor is actually found guilty of waste, fraud, or abuse of the system would damage the contractors credibility even if found innocent.

We do not recommend that contractors have to waive their right of confidentiality they may have during an investigation. Contractors have the right to continue to keep their records confidential prior to a final ruling. If in fact the contractor is found in violation of program rules the confidentiality clause would no longer apply.

We recommend that contractors that are found in violation of program rules be denied receipt of all related funding for one year. We recommend that there be a waiver of filing for beneficiaries as was done under the Mastermind finding and affected applicants be allowed to re-file for applications under a special window.

Re: Paragraph 98. Sanctions and debarment procedures

If a beneficiary is denied funding for years of violation, they have already paid a "fine." If the beneficiary shows intent to comply by providing an acceptable plan to correct their errors, and develop new internal controls that will prevent them from making the same mistakes in the future, then it would not be necessary to reduce the discount rate.

Re: Paragraph 99. Sanctions and debarment procedures

We agree with the Commission that it should establish more aggressive sanctions and debarment procedures and disclosures.

As stated earlier, we do not believe the names of any company and/or individual under investigation should be published until the investigation is completed, and wrongdoing has been proven by the courts after due process. Any notification of names prior to conviction could cause irreparable damage to the individual and/or company's reputation resulting in loss of revenue. Such a practice would also deter law abiding service providers

from participating in the program for fear of being unjustly accused of wrongdoing without due process.

Re: Paragraph 95. Other Matters.

We encourage the Commission to pursue a permanent exemption for the USF from the Antideficiency Act (ADA).

We support the comments submitted by the E-Rate Service Provider Forum (ESPF) with the exception of the following:

a. Eliminate the Form 486. We believe the Form 486 still plays a key role in notifying USAC that the applicant has begun to receive the service or will be receiving the products and/or services delivered. The submission of the Form 486 gives permission to SLD to issue payment for invoices submitted by the service provider for the associated funding request and in essence is the applicant's "okay to pay" the service provider. As we stated earlier in our response to paragraph #41 , there are several changes that need to be made to the Form 486 including removing certification of CIPA and technology plan certifications from the Form. These certifications should be done at the billed entity level and not for an individual funding request. Also, we believe that the implementation of a three-year application for priority one recurring services (requiring one Form 486 for the three-year period) will provide the assurance of funding needed for service providers and applicants.

b. Certification of E-Rate consultants. Throughout the life of the E-Rate program, individuals and companies have become involved in both participating in the program and providing consulting assistance to service providers and applicants. There are a large number of experienced E-Rate consultants who provide a valuable service to the service provider and applicant community. However, there are also inexperienced and careless consultants who provide poor and/or incorrect advice. We believe that an individual or company who holds itself out as an E-Rate consultant should be both experienced and knowledgeable in all aspects of the program that they profess to be experts in. A consultant who gives the wrong advice can cause seriously negative repercussions for service providers and applicants who place their trust in the consultant. Therefore, we believe that the Commission should consider implementing a certification process for E-Rate consultants as we discussed earlier in our response to paragraph # 43.

Respectfully Submitted,

Kellogg & Sovereign Consulting, LLC

Debi Sovereign October 17, 2005